

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: GENE E. MCKISSIC, RESPONDENT

ARKANSAS BAR ID#76075

CPC DOCKET NO. 2002-157

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information referred from the Arkansas Supreme Court on October 10, 2002. The information related to the representation of Brian Gooden by Respondent in 2002.

On October 24, 1995, Brian Gooden was convicted of four felony offenses and sentenced to the Arkansas Department of Correction for a period of six (6) years. McKissic filed a notice of appeal on Gooden's behalf on October 26, 1995. The appeal was not completed. In 2001, McKissic was directed by the Arkansas Supreme Court to remain as counsel for Gooden, to lodge the record, and to file a brief on Gooden's behalf. McKissic was given February 27, 2002, as a final extension to file a brief on Gooden's behalf. McKissic failed to file the brief by that date. McKissic was ordered by the Court to appear on April 11, 2002 and show cause as to why he should not be held in contempt of court. McKissic filed the brief with the Clerk of the Court on April 11, 2002. A Master was appointed by the Court to determine the facts on why McKissic should not be held in contempt.

On October 10, 2002, the Arkansas Supreme Court issued a Per Curiam Opinion. According to the Report and Findings of Fact submitted by the Master, McKissic did not obey the Court's Order directing him to file a brief on Gooden's behalf by February 27, 2002. McKissic presented to the Master the difficulties he encountered in representing Gooden, who accused him of fraud and conspiracy; directed him to breach a plea agreement that had been reached with the prosecuting attorney; accused him of taking money for an appeal when he had never been paid for work done; accused him of being ineffective and incompetent; and demanded that he include allegations in the brief that McKissic found to be ridiculous. Nevertheless, McKissic understood his obligation to the court. The Court found McKissic to be in contempt of court and directed him to pay a fine in the amount of \$250. The Court thereafter referred the matter to the Office of Professional Conduct.

McKissic stated in his response to the Formal Complaint and again provided the information concerning the difficulties he encountered in representing Gooden. Mr. McKissic denied violating the Model Rules of Professional Conduct, as alleged.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Mr. McKissic violated Model Rule 1.3 when he failed to file in a timely manner a brief on behalf of his client, Brian Gooden. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. Mr. McKissic violated Model Rule 3.4(c) when he failed to tender a brief on behalf of his client, Brian Gooden, until April 11, 2002, after he was granted a final extension date of February 27, 2002. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal.
3. Mr. McKissic violated Model Rule 8.4(d) when he failed to file a brief with the Arkansas Supreme Court in a timely manner which resulted in a delay in the orderly and timely resolution of appellate proceedings and required the Court to expend additional time and effort which would not have been necessary otherwise.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that GENE E. MCKISSIC, Arkansas Bar ID# 76075, be, and hereby is, REPRIMANDED; fined in the amount of One Hundred and Fifty Dollars (\$150); and assessed costs in the amount of Fifty Dollars (\$50), for his conduct in this matter. The fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL B

By: \_\_\_\_\_

John L. Rush, Chair, Panel B

Date: \_\_\_\_\_